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Skagit County Auditor

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ED
3 2004
COUNTY AUDITOR

AFTER RECORDING RETURN TO:
SKAGIT COUNTY HEARING EXAMINER
302 SOUTH FIRST STREET
MOUNT VERNON, WA 98273

DOCUMENT TITLE: ORDER ON APPEAL AP 04 0427

HEARING OFFICER: SKAGIT COUNTY HEARING EXAMINER

APPELLANT: RICHARD STOCKINGER

ASSESSOR PARCEL NO: P108571

ABBREVIATED LEGAL DESCRIPTION: The property is located at 34815 North Shore Drive, Mount Vernon, WA; a portion of Section 26, Township 33 N, Range 6E, W.M., Skagit County, Washington

BEFORE THE SKAGIT COUNTY HEARING EXAMINER

In the Matter of the Appeal of)
)
RICHARD STOCKINGER)
)
Of an Administrative Interpretation)
(PL03-0723) Regarding an Alleged)
Mapping Error in Relation to the)
Appellant's Property on Lake Cavanaugh.)
_____)

PL04-0427

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND DECISION**

This appeal came on regularly for hearing on July 14, 2004. David Hough, Consultant, represented the appellant. Kirk Johnson, Senior Planner, represented the Administrative Official (Planning and Permit Center).

The proceeding was an open record appeal. Five exhibits were admitted at the hearing. The Examiner requested certain additional official documents and these were provided after the hearing. The exhibits admitted are the following:

1. Application for Administrative Interpretation, received 9/02/03.
2. Administrative Interpretation, dated May 17, 2004.
3. Notice of Appeal, received June 9, 2004
4. Staff Memorandum on the appeal, dated July 12, 2004
5. Map showing county road, rural village boundary, platted property, and Stockinger property in the Lake Cavanaugh area.
6. Commissioners' Decision on Appeal of Day Creek Sand and Gravel decision, dated June 9, 2003.
7. Superior Court decision upholding Commissioners in Day Creek Sand and Gravel appeal, dated February 18, 2004.
8. Pre GMA zoning map, Lake Cavanaugh.
9. Current Comprehensive Plan/ Zoning Map showing Lake Cavanaugh.



Testimony was heard and argument was made. From the record, the Hearing Examiner enters the following:

FINDINGS OF FACT

1. On September 2, 2003, Richard Stockinger (applicant/appellant) requested an Administrative Interpretation pursuant to SCC 14.06.040(3) related to an alleged mapping error in the area of Lake Cavanaugh. The purported error was the exclusion of certain property fronting on North Shore Drive from the Rural Village Residential designation.

2. The appellant is the owner of Parcel No. P108571 at 34814 North Shore Drive. The parcel is 37 acres in size and is identified as Tract E of Lake Cavanaugh Subdivision No. 1. The western 7.5 acres of this parcel is designated Rural Village Residential by the Comprehensive Plan and Zoning map for the area. However, the remaining 30 acres is designated as Secondary Forest.

3. The majority of P108571 fronts on North Shore Drive. There is no other property fronting on North Shore or South Shore Drive where the portion fronting on the County road was not included in the Rural Village. Appellant, therefore, argues that when a portion of Tract E fronting on North Shore Drive was not included in Rural Village a mapping error was made.

4. The appellant notes that on the large lot directly west of P108571 the portion fronting on North Shore Drive was put into the Rural Village. He identifies four other areas around the lake where large acreages were totally or partially included in the Rural Village designation. The Stockinger property is the lone exception.

5. In response to the application, the County issued its Administrative Determination on May 17, 2004. The decision was that no mapping error occurred. The following points were made:

(1) The Comprehensive Plan established the boundaries of Rural Villages based substantially on the County's pre-GMA (Growth Management Act) residential zoning.

(2) In the Lake Cavanaugh area, the Rural Village boundaries as currently mapped are substantially the same as the old residential zone boundaries.

(3) The area in question on Parcel No. P108571 was not zoned residential on the pre-GMA map.

(4) Comparing the old zoning map and the new one for the property to the west of the P108571 suggests that a mapping error may have been made on that property.



(5) There is no record of correspondence from the owner of P108571 requesting inclusion in the Rural Village during development of the Comprehensive Plan.

(6) To change the designation based on equity arguments would be a legislative rather than an administrative action. The process for such a change is through a Comprehensive Plan Amendment.

6. In the Staff Memorandum prepared for this appeal, the County concluded that the legislative intent at the time of adoption of the new Comprehensive Plan/Zoning Map was generally to follow the old Residential District boundaries in establishing the Rural Village.

7. The excluded portion of the subject property was not developed at the time of Comprehensive Plan adoption. Indeed, the County owned the Stockinger property in 1997 when the Plan was pending. Later the County sold to a timber company from which Stockinger purchased in 2002, two years after the Plan became effective.

8. Under the Comprehensive Plan of July 24, 2000, Rural Villages encompass "existing development patterns and uses." CP Policy 4A-7.9. That policy goes on to say:

It is the intent that Rural Villages will represent historical communities throughout the County with future development limited to infill within designated boundaries.

CP Policy 4A-7.11 similarly states that

The areas designated Rural Village on the comprehensive plan map are intended to reflect primarily historic, existing development parcels and uses at Rural Village density.

9. In fact, under CP Policy 4A-7.10, the critical moment for consideration of development appears to be 10 years before the plan was finally adopted. The policy states: "The boundaries of historic Rural Villages shall be defined predominantly by the built environment that existed on or before July 1, 1990."

10. The appellant argues that the Comprehensive Plans reference to "existing development patterns" refers to development trends, not simply to the level of development in 1990 or at the time of plan adoption. He says that the trend is toward infill development of the entire lakeshore. The existence of such a trend is the reason for asserting that there was a mistake in mapping.

11. If any of the appellant's excluded property were presently incorporated into the Rural Village, the new boundary line would have to be inferred. Yet, there is no consistent pattern in the present boundary showing how much of a large lot should be included. Moreover, the frontage of property on the County road around the lake is not mentioned in the Comprehensive Plan designation policies as a criterion for inclusion in the Rural Village.



12. The practical consequence of the being stuck with the existing zoning is shown by the comparative densities of the Secondary Forest and Rural Village designations. The average allowed density in the Secondary Forest designation is one lot per 20 acres, as opposed to one residence per 2.5 acres in the Rural Village. The area along North Shore Drive proposed for inclusion in the Rural Village zone is about 10 acres.

13. The practical problem with following the alternative of seeking a Comprehensive Plan Amendments is one of timing. There is no way of predicting with certainty when such an amendment might be obtained.

14. Having examined the information presented, the Examiner believes that inferences are present that would support either the County's or the appellant's position. Given these competing inferences, there is insufficient basis for finding that the Administrative Interpretation was clearly erroneous.

15. Any conclusion herein which may be deemed a finding is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Hearing Examiner has jurisdiction over the persons and the subject matter of this proceeding.

2. Objection to the timing of the Staff response to the appeal was waived.

3. The current boundary was of record and readily discernible when the appellant purchased the property. There is, thus, no reasonable posture of disappointed expectations.

4. The appellant has the burden of proving that the administrative decision was clearly erroneous. On the record made, he failed to carry this burden.

5. The Staff said that it does not necessarily disagree with the change being sought by the appellant, but concluded that the appropriate route is to pursue the change through a Comprehensive Plan amendment. The Examiner, with similar reluctance, agrees. Given the Plan's emphasis on "existing development" and the "built environment that existed on or before July 1, 1990," there is no way to conclude that the Administrative Interpretation under appeal was clearly wrong.

6. Any finding herein which may be deemed a conclusion is hereby adopted as such.



DECISION

The appeal is denied. The Administrative Interpretation is affirmed.



Wick Dufford, Hearing Examiner

Date of Action: August 30, 2004.

Copy Transmitted to Appellant: August 30, 2004

RECONSIDERATION/APPEAL

As provided in SCC 14.06.180, a request for reconsideration may be filed with the Planning and Permit Center within 10 days after the date of this decision. As provided in SCC 14.06.110(13), the decision may be appealed to the Board of County Commissioners by filing a written Notice of Appeal with the Clerk of the Board within 14 days after the date of the decision, or decision on reconsideration, if applicable.



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